

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

In the Matter of:

MIDTOWN NEON SIGN  
CORPORATION

FAA Order No. 97-1

Served: January 8, 1997

Docket No. CP94EA0057

**ORDER GRANTING PETITION FOR RECONSIDERATION**

Complainant Federal Aviation Administration (FAA) has petitioned for modification of the following portion of FAA Order No. 96-26 at 18, n.13 (August 13, 1996):

Unless Respondent files a petition for review with a United States Court of Appeals within 60 days of service of this decision (under 49 U.S.C. § 46110), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1994).

Complainant argues that 49 U.S.C. § 46110, which provides for review by a United States Court of Appeals, does not apply to cases brought under the Federal hazardous materials transportation statute.<sup>1</sup>


Complainant's petition for modification is granted. It is provided in 49 U.S.C. § 46301(g) that an order imposing a civil penalty may be reviewed judicially only under 49 U.S.C. § 46110. However, 49 U.S.C. § 46110 specifies that it applies only to orders issued under Title 49, Subtitle VII, Part A (entitled "Air

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<sup>1</sup> 49 U.S.C. §§ 5101-5127.

Commerce and Safety").<sup>2</sup> Since Complainant chose to bring this action under 49 U.S.C. § 5123,<sup>3</sup> and not under Title 49, Subtitle VII, Part A, Complainant is correct in asserting that 49 U.S.C. § 46110 does not apply to this matter. Consequently, it is ordered that footnote 13 of FAA Order No. 96-26 at 18 be omitted.<sup>4</sup>

LINDA HALL DASCHLE  
Acting Administrator  
Federal Aviation Administration

  
VICKI S. LEEMON<sup>5</sup>  
Manager, Adjudication Branch

Issued this 8th day of January, 1997.

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<sup>2</sup> 49 U.S.C. §§ 40101-46507.

<sup>3</sup> See Amended Complaint, dated December 12, 1994.

<sup>4</sup> Note that the footnote at issue (footnote 13 in FAA Order No. 96-26) was purely informational; it did not involve any issue that the Administrator needed to address for proper disposition of the case.

<sup>5</sup> Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (see 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.